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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/603,343

06/25/2003

Joanne Mary Holmes

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10/20/2006

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EXAMINER

CHAWLA, JYOTI

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 10/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/603,343

Applicant(s)

HOLMES ET AL.

Examiner

Jyoti Chawla

Art Unit

1761

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 October 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed ^{response} amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None

Claim(s) objected to: None

Claim(s) rejected: 1-9


Claim(s) withdrawn from consideration: None

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


JYOTI CHAWLA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700

Response to Arguments

Applicant's comments filed October 12, 2006 have been considered but are not persuasive. The rejections are maintained for the reasons of record, as set forth in the Final Office Action. Applicant is reminded that the claims are read in light of the specification and limitations from the specification can not be read into the claims. Regarding the invention being directed to a superior method of preparing tea leaf product as described in the specification, the claims currently do not reflect the patentable distinction for the invention from the prior art of record.

It is further noted that applicants state that "the present invention is ...by mixing tea leaves and tea powder and wetting and drying the resulting mixture simultaneously" (Page 5, Remarks). This is incorrect, as quoted from Claim 1 "A method ...mixing leaf tea with tea solids derived from tea powders, the method being characterised in that the mixture of tea leaves and tea powder is simultaneously wetted and dried". The term "Tea powder" is not the same as "tea solids derived from tea powder".

Continuation of 11. does NOT place the application in condition for allowance because:

At the top of page 2 of the response of October 12, 2006, Applicant states that the July 12, 2006 Office action summary sheet (PTOL-326) indicates both a final and non-final status for said action, and that the Office action failed to include the "Final Rejection language" (at the end of the action). In light of this, applicant has filed a response as though the action was non-final.

This is not deemed persuasive, and applicant's response will be treated as an after-final response for the following reasons:

- o In the previous response (to the first Office action), applicant provided one additional claim (claim 9), which was included in the same rejection(s) of record, i.e. those maintained from the first Office action.
- o No new grounds of rejection were made in the (final) Office action of July 12, 2006, and thus the rejections of record in said action were maintained from the previous Office action for the same reasons of record. Thus, it would naturally follow that the second action would be final (as is standard practice as dictated by the MPEP), as there was no need for the second Office action to be non-final.
- o Given these facts, and in light of the fact that the PTOL-326 did indeed indicate that the Office action was final (albeit, despite the additional box having been checked), the status of the Office action was and is final, and will continue to be treated as such.
Any inconvenience to applicant and applicant's representative is regretted.